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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BRIAN DEPRATTER, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

DOLLAR GENERAL CORPORATION,

Defendant.

Case No. 5:20-cv-1356

CLASS ACTION

CLASS ACTION COMPLAINT

Plaintiff Brian DePratter, individually and on behalf of all others similarly situated, complains and alleges as follows based on personal knowledge as to himself, on the investigation of his counsel, and on information and belief as to all other matters. Plaintiff believes that substantial evidentiary support exists for the allegations set forth in this complaint, and that a reasonable opportunity for discovery will reveal such evidence.

NATURE OF ACTION

1. Plaintiff brings this Class Action Complaint for legal and equitable remedies resulting from the illegal actions of Dollar General Corporation (“Defendant”) in sending automated text messages to his cellular telephone and the

cellular telephones of numerous other individuals across the country, in clear violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”).

JURISDICTION AND VENUE

2. The Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 47 U.S.C. § 227.

3. Personal jurisdiction and venue are proper because the subject text messages received by Plaintiff originated from within this District, having been sent on Defendant’s behalf and at its direction and control by Quotient Technology, Inc. (“Quotient”) – an SMS text-message marketing company retained and utilized by Defendant – from Quotient’s headquarters and principal place of business in Mountain View, California, which is within this District.

PARTIES

4. Plaintiff is an individual and a “person” as defined by 47 U.S.C. § 153(39). Plaintiff is a resident and citizen of Nahunra, Georgia.

5. Defendant Dollar General Corporation is a consumer retail store that maintains numerous locations throughout the country. Defendant is organized and incorporated under the laws of Tennessee and maintains its corporate headquarters in Goodlettsville, Tennessee. Defendant is a “person” as defined by 47 U.S.C. § 153(39).

THE TELEPHONE CONSUMER PROTECTION ACT OF 1991

6. In 1991, faced with a national outcry over the volume of robocalls being received by American consumers, Congress enacted the TCPA to address certain abuse telecommunications practices.

1 7. The TCPA prohibits, *inter alia*, making any telephone call to a cellular
2 telephone using a “prerecorded or artificial voice” or an “automatic telephone dialing
3 system” (“ATDS” or “autodialer”) absent an emergency purpose or the “express
4 consent” of the party called. The TCPA further provides that any text message
5 constituting an “advertisement” or “telemarketing” message within the meaning of the
6 TCPA requires the sender to acquire the recipient’s “prior express written consent”
7 before initiating such a message via an autodialer.

8 8. According to findings by the Federal Communication Commission
9 (“FCC”), which is vested with authority to issue regulations implementing the TCPA,
10 autodialed calls and text messages are prohibited because receiving them is a greater
11 nuisance and more invasive than receiving live or manually dialed telephone
12 solicitations. The FCC also recognized that wireless customers are charged for such
13 incoming calls and texts whether they pay in advance or after the minutes are used.
14 Moreover, because cellular telephones are carried on their owners’ persons, unsolicited
15 calls and texts transmitted to such devices via an autodialer are distracting and
16 aggravating to their recipients and intrude upon their recipients’ seclusion.

17 9. To state a cause of action for violation of the TCPA, a plaintiff need only
18 set forth allegations demonstrating that the defendant “called a number assigned to a
19 cellular telephone service using an automatic dialing system or prerecorded voice.”
20 *Breslow v. Wells Fargo Bank, N.A.*, 857 F. Supp. 2d 1316, 1319 (S.D. Fla. 2012), *aff’d*,
21 755 F.3d 1265 (11th Cir. 2014).

1 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

2 10. Plaintiff was at all times mentioned herein the subscriber or customary
3 user of the cellular telephone number (912) ***-5165 (the “5165 Number”). The 5165
4 Number is, and at all times mentioned herein was, assigned to a cellular telephone
5 service as specified in 47 U.S.C. § 227(b)(1)(A)(iii).

6 11. During the preceding four years, Defendant transmitted, by itself or
7 through an intermediary or intermediaries, at least one text message to Plaintiff’s 5165
8 Number and at least one text message (that was identical to or substantially the same
9 as those received by Plaintiff) to each member of the putative Class. All of the subject
10 text messages sent to Plaintiff and the members of the putative Class constituted
11 “advertisements” or “telemarketing” messages within the meaning of the TCPA and its
12 implementing regulations because each such message was aimed at promoting the
13 commercial availability of Defendant’s “DG Digital Coupon program” text message
14 program, for the purposes of offering discounts and coupons and ultimately selling
15 products and services to the recipients of such messages. Defendant offered such
16 services for the purpose of deriving commercial profit from the purchase of any such
17 products or services ultimately made by Plaintiff and members of the proposed Class
18 at its locations.

19 12. All of the subject text messages received by Plaintiff and the members of
20 the putative Class were transmitted by or on behalf of Defendant without the requisite
21 prior “express written consent” of Plaintiff or any member of the putative Class.

22 13. For example, on or about October 22, 2019, Defendant transmitted or
23 caused to be transmitted, by itself or through an intermediary or intermediaries, and
24

1 without Plaintiff's prior "express written consent," a text message to the 5165 Number
2 that stated as follows:

3 AutoMsg opt in for Dollar General eReceipts Reply YES to
4 opt-in 1 msg/receipt HELP 4 help STOP 2 stop Msg & data
 rates may apply

5 14. Each unsolicited text message sent by or on behalf of Defendant to
6 Plaintiff's 5165 Number originated from the telephone number 60606, which is a
7 dedicated SMS short code leased or owned by or on behalf of Defendant that Defendant
8 uses to transmit text messages to consumers *en masse*, in an automated fashion and
9 without human intervention.

10 15. Each unsolicited text message sent by or on behalf of Defendant from the
11 SMS short code 60606 to Plaintiff's 5165 Number and to the numbers of the unnamed
12 class members were sent pursuant to the "DG Digital Coupon program," which
13 "delivers digital coupons that help you save money on the items you buy and those
14 you'd like to try," and "enables you to receive, view and track your receipts digitally,
15 access personalized offers and deals, and create lists."¹ Plaintiff is informed and
16 believes, and thereupon alleges, that the "receipts" sent by or on behalf of Defendant
17 pursuant to its "eReceipts" service (advertised in the text message depicted in
18 paragraph 13) are sent pursuant to its "DG Digital Coupon program" and contain
19 advertisements and promotional material aimed at advertising the commercial
20 availability, and ultimately selling, products and services to the consumers to whom
21 such receipts are sent.

22 ¹ "General: What is the DG Digital Coupon program and what are the benefits to
23 me?," Dollar General Corporation, *available at* <https://dg.coupons.com/help/> (last
24 accessed Feb. 23, 2020) (website operated and maintained on behalf of Defendant by
Quotient Technology, Inc., and accessible via Quotient's coupons.com domain name).

1 16. Because Plaintiff's cellular phone alerts him whenever he receives a text
2 message, each unsolicited text message transmitted by or on behalf of Defendant to
3 Plaintiff's 5165 Number invaded Plaintiff's privacy and intruded upon Plaintiff's
4 seclusion upon receipt.

5 17. All telephone contact by Defendant or affiliates, subsidiaries, or agents of
6 Defendant to Plaintiff's 5165 Number and to the numbers belonging to the unnamed
7 Class members occurred using an "automatic telephone dialing system" as defined by
8 47 U.S.C. § 227(b)(1)(A). Specifically, Defendant utilized an "automatic telephone
9 dialing system" because all such text messages were sent from a dedicated SMS short
10 code used for the exclusive purpose of transmitting text messages to consumers *en*
11 *masse*; because the subject text messages contained the same or substantially the same
12 generic, pro forma content; because the dialing equipment utilized by or on behalf of
13 Defendant to send such messages includes features substantially similar to a predictive
14 dialer, inasmuch as it is capable of making or initiating numerous calls or texts
15 simultaneously (all without human intervention); and because the hardware and
16 software used by or on behalf of Defendant to make or initiate such messages have the
17 capacity to store, produce, and dial random or sequential numbers, and to receive and
18 store lists of telephone numbers, and to then dial such numbers, *en masse*, in an
19 automated fashion without human intervention.

20 18. And indeed, Defendant actually transmitted the text messages at issue in
21 this case to Plaintiff and all other putative Class members in an automated fashion and
22 without human intervention, with hardware and software that have the capacity to store,
23
24

1 produce, and dial random or sequential numbers and which received and stored
2 telephone numbers and then automatically dialed such numbers.

3 19. Neither Plaintiff, nor any other member of the putative Class, provided
4 their prior “express written consent” to Defendant or any affiliate, subsidiary, or agent
5 of Defendant to transmit the subject text messages to the 5165 Number or to any other
6 Class member’s cellular telephone number by means of an “automatic telephone
7 dialing system” within the meaning of 47 U.S.C. § 227(b)(1)(A).

8 20. None of Defendant’s text messages to the 5165 Number or to any putative
9 Class member’s cellular telephone number was sent for an emergency purpose.

10 **CLASS ALLEGATIONS**

11 21. Class Definition. Plaintiff brings this civil class action on behalf of himself
12 individually and on behalf of all other similarly situated persons as a class action
13 pursuant to Federal Rule of Civil Procedure 23. The “Class” which Plaintiff seeks to
14 represent is comprised of and defined as follows:

15 All persons in the United States who, at any time between the
16 four years preceding the filing of this action and the present:

17 (1) subscribed to a cellular telephone service;

18 (2) received, at the telephone number assigned to such
19 service, at least one text message promoting Defendant's
“eReceipts” service sent by or on behalf of Defendant
from the SMS short-code 60606; and

20 (3) for whom Defendant lacks any record establishing the
21 person’s provision of “express written consent” to receive
22 such message(s) prior to the initiation of the first such
23 message.
24

1 22. Excluded from the class are Defendant, its officers and directors, members
2 of the immediate families of the foregoing, legal representatives, heirs, successors, or
3 assigns of the foregoing, and any entity in which Defendant has a controlling interest.

4 23. Plaintiff reserves the right to modify the definition of the Class (or add
5 one or more subclasses) after further discovery.

6 24. Plaintiff and all Class members have been impacted and harmed by the
7 acts of Defendant or its affiliates, agents, or subsidiaries acting on its behalf.

8 25. This Class Action Complaint seeks injunctive relief and monetary
9 damages.

10 26. Defendant or any affiliates, subsidiaries, or agents of Defendant have
11 acted on grounds generally applicable to the Class, thereby making final injunctive
12 relief and corresponding declaratory relief with respect to the Class as a whole
13 appropriate. Moreover, on information and belief, Plaintiff alleges that the TCPA
14 violations complained of herein are substantially likely to continue in the future if an
15 injunction is not entered.

16 27. This action may properly be brought and maintained as a class action
17 pursuant to Federal Rule of Civil Procedure 23(a) and (b). This class action satisfies
18 the numerosity, typicality, adequacy, commonality, predominance, and superiority
19 requirements.

20 28. On application by Plaintiff's counsel for class certification, Plaintiff may
21 also seek certification of subclasses in the interests of manageability, justice, or judicial
22 economy.

1 29. Numerosity. The number of persons within the Class is substantial,
2 believed to amount to thousands of persons dispersed throughout the United States. It
3 is, therefore, impractical to join each member of the Class as a named plaintiff. Further,
4 the size and relatively modest value of the claims of the individual members of the
5 Class renders joinder impractical. Accordingly, utilization of the class action
6 mechanism is the most economically feasible means of determining and adjudicating
7 the merits of this litigation.

8 30. Typicality. Plaintiff received at least one text message from Defendant
9 that originated from the telephone number 60606, and Defendant lacks any record
10 establishing Plaintiff's prior "express written consent" to receive any such messages
11 within the meaning of the TCPA. Consequently, the claims of Plaintiff are typical of
12 the claims of the members of the Class, and Plaintiff's interests are consistent with and
13 not antagonistic to those of the other Class members he seeks to represent. Plaintiff
14 and all members of the Class have been impacted by, and face continuing harm arising
15 out of, Defendant's TCPA-violative misconduct as alleged herein.

16 31. Adequacy. As the proposed Class representative, Plaintiff has no interests
17 adverse to or which conflict with the interests of the absent members of the Class, and
18 he is able to fairly and adequately represent and protect the interests of such a Class.
19 Plaintiff has raised viable statutory claims of the type reasonably expected to be raised
20 by members of the Class and will vigorously pursue these claims. If necessary as the
21 litigation (including discovery) progresses, Plaintiff may seek leave to amend this Class
22 Action Complaint to modify the Class definition set forth above, add additional Class
23 representatives, or assert additional claims.
24

1 32. Competency of Class Counsel. Plaintiff has retained and is represented
2 by experienced, qualified, and competent counsel committed to prosecuting this action.
3 Plaintiff's counsel are experienced in handling complex class action claims, including
4 in particular claims brought under the TCPA (as well as other consumer protection and
5 data-privacy statutes).

6 33. Commonality and Predominance. There are well-defined common
7 questions of fact and law that exist as to all members of the Class and predominate over
8 any questions affecting only individual members of the Class. These common legal
9 and factual questions, which do not vary from Class member to Class member and may
10 be determined without reference to the individual circumstances of any Class member,
11 include (but are not limited to) the following:

- 12 a) Whether Defendant or affiliates, subsidiaries, or agents of Defendant sent
13 text messages to Plaintiff's and Class members' cellular telephones;
- 14 b) Whether such text messages sent from the SMS short code 60606 were
15 sent using an "automatic telephone dialing system";
- 16 c) Whether Defendant can meet its burden to show that it (or any disclosed
17 affiliate, subsidiary, or agent of Defendant acting on its behalf) obtained
18 prior "express written consent" within the meaning of the TCPA to
19 transmit the subject text messages to the recipients of such messages,
20 assuming such an affirmative defense is timely raised; and
- 21 d) Whether Defendant or any affiliates, subsidiaries, or agents of Defendant
22 should be enjoined from engaging in such conduct in the future.

1 34. Superiority. A class action is superior to other available methods for the
2 fair and efficient adjudication of this controversy because the prosecution of individual
3 litigation on behalf of each Class member is impracticable. Even if every member of
4 the Class could afford to pursue individual litigation, the court system could not;
5 multiple trials of the same factual issues would magnify the delay and expense to all
6 parties and the court system. Individualized litigation would also present the potential
7 for varying, inconsistent or contradictory judgments. By contrast, the maintenance of
8 this action as a class action, with respect to some or all of the issues presented herein,
9 presents few management difficulties, conserves the resources of the parties and the
10 court system and protects the rights of each member of the Class. Plaintiff anticipates
11 no difficulty in the management of this action as a class action. Class wide relief is
12 essential to compel compliance with the TCPA and thus protect consumers' privacy.
13 The interests of Class members in individually controlling the prosecution of separate
14 claims is small because the statutory damages recoverable in an individual action for
15 violation of the TCPA are likewise relatively small. Management of these claims is
16 likely to present significantly fewer difficulties than are presented in many class actions
17 because the text messages at issue are all automated and because Defendant lacks any
18 record reflecting that it obtained the requisite consent from any Class member to be
19 sent such messages. Class members can be readily located and notified of this class
20 action by reference to Defendant's records and, if necessary, the records of Defendant's
21 affiliates, agents, or subsidiaries and cellular telephone providers.

22 35. Additionally, the prosecution of separate actions by individual Class
23 members would create a risk of multiple adjudications with respect to them that would,
24

1 as a practical matter, be dispositive of the interests of other members of the Class who
2 are not parties to such adjudications, thereby substantially impairing or impeding the
3 ability of such nonparty Class members to protect their interests. The prosecution of
4 individual actions by Class members could also establish inconsistent results and/or
5 establish incompatible standards of conduct for Defendant.

6 **CLAIM FOR RELIEF**
7 **VIOLATION OF THE TELEPHONE**
8 **CONSUMER PROTECTION ACT**
9 **(47 U.S.C. § 227)**

10 36. Plaintiff incorporates by reference the foregoing paragraphs of this Class
11 Action Complaint as if fully stated herein.

12 37. Plaintiff and each member of the Class received at least one text message
13 sent by or on behalf of Defendant during the class period. All such messages sent to
14 Plaintiff and the members of the proposed Class advertised Defendant's text message
15 service and were aimed at ultimately selling goods or services sold by Defendant at its
16 stores; consequently, all such messages constituted "advertising" or "telemarketing"
17 material within the meaning of the TCPA and its implementing regulations.
18 Additionally, all such messages were sent via the same dialing technology, which
19 qualified as an ATDS within the meaning of the TCPA, as evidenced by the generic
20 nature of the text messages, the use of a dedicated telephone number to transmit each
21 such message, and the capacities, capabilities, and features of the dialing technology at
22 issue, as alleged above.

23 38. Neither Plaintiff nor any other member of the Class provided Defendant
24 his or her prior "express written consent" within the meaning of the TCPA to receive
the autodialed text messages at issue in this case.

39. Defendant's use of an ATDS to transmit the subject text messages to telephone numbers assigned to a cellular telephone service, including to Plaintiff's 5165 Number and the numbers of all members of the proposed Class, absent the requisite prior "express written consent," as set forth above, constituted violations of the TCPA by Defendant, including but not limited to violations of 47 U.S.C. § 227(b)(1)(A)(iii).

40. Plaintiff and all Class members are entitled to, and do seek, an award of \$500.00 in statutory damages for each such violation of the TCPA committed by or on behalf of Defendant (or \$1,500.00 for any such violations committed willfully or knowingly) pursuant to 47 U.S.C. § 227(b)(3).

41. Plaintiff, individually and on behalf of the putative Class, seeks an award of attorneys' fees and costs to Plaintiff's counsel pursuant to Federal Rule of Civil Procedure 23.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Brian DePratter prays for relief and judgment in favor of himself and the Class as follows:

A. Injunctive relief sufficient to ensure Defendant refrains from violating the TCPA in the future;

B. Statutory damages of \$500.00 for himself and each Class member for each of Defendant's violations of 47 U.S.C. § 227(b)(1) (or \$1,500.00 for each such violation to the extent committed willfully or knowingly);

C. An Order certifying this action to be a proper class action pursuant to Federal Rule of Civil Procedure 23, establishing an appropriate Class and any

1 Subclass(es) the Court deems appropriate, finding that Plaintiff is a proper
2 representative of the Class, and appointing the attorneys representing Plaintiff as
3 counsel for the Class; and

4 D. An award of attorneys' fees and costs to Plaintiff's counsel, payable from
5 any class-wide damages recovered by the Class, pursuant to Federal Rule of Civil
6 Procedure 23.

7 **DEMAND FOR JURY TRIAL**

8 On behalf of himself and all others similarly situated, Plaintiff demands a trial
9 by jury pursuant to Federal Rule of Civil Procedure 38(b) on all claims and issues so
10 triable.

11 Dated: February 23, 2020

HEDIN HALL LLP

12 By: /s/ Frank S. Hedin
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